

**HOUSE COMMERCE COMMITTEE
SUBCOMMITTEE ON FINANCE AND HAZARDOUS WASTE
"FEDERAL BARRIERS TO ENVIRONMENTAL CLEANUPS"**

**February 14, 1997
Columbus, Ohio**

**TESTIMONY OF ROBERT M. WILKENFELD
CHEVRON PRODUCTS COMPANY**

Mr. Chairman and members of the Committee, my name is Robert M. Wilkenfeld and I am a Senior Project Manager for Chevron Products Company, responsible for oversight of the cleanup of Chevron's former Toledo, Ohio refinery operation. Also with me today is John C. Tiffany, Facility Supervisor overseeing cleanup of Chevron's former Cincinnati, Ohio refinery. We thank you for the opportunity to relay Chevron's experiences with the remedial work at these two Ohio locations to you today and the federal barriers to expeditious, environmentally protective and cost effective cleanups.

Cleanup of Chevron's former Toledo refinery, which is proceeding under Ohio's new Voluntary Action Program presents an interesting contrast to Chevron's cleanup of its former Cincinnati refinery, which is proceeding pursuant to the terms of Corrective Action Order issued by U.S. EPA pursuant to the Resource Conservation and Recovery Act ("RCRA").

The former Toledo refinery ceased all on-site waste management activities prior to the effective date of the RCRA and was closed in 1981. The property, located within the confines of the cities of Oregon and Toledo, has lay dormant for years. Chevron's interest in pursuing cleanup at the Toledo facility was heightened by two events: passage of Am. Sub. S.B. 221 by 120th Ohio General Assembly, the legislation creating Ohio's Voluntary Action Program ("VAP") and increasing interest by third parties, including the City of Toledo, in reuse of the property.

Ohio's VAP gave Chevron a mechanism to proceed with some assurance that the investigation and remediation conducted would have some regulatory standing. Without the passage of Ohio's VAP, it is not certain that Chevron would have proceeded voluntarily.

Ohio's VAP establishes a privatized mechanism by which a person may voluntarily undertake the investigation and remediation of contaminated property, establish that the property meets "applicable standards" and thereby obtain a "covenant-not-to-sue" from the Director of Ohio EPA releasing the volunteer from liability to the State for performing additional investigative and remedial work with respect to that property. The investigation is done under the supervision of a "certified professional". When the volunteer determines that the property meets applicable standards, he may seek a "no further action letter" from the certified professional. "Applicable standards" are spelled out in rules adopted by the Ohio EPA. A no further action letter may be issued at any stage after a "Phase I" or "Phase II" assessment indicates applicable standards have or will be achieved through remedial activities. After receiving a no further action letter from a certified professional with accompanying verification, the Director must issue a covenant not-to-sue releasing the person who undertook the voluntary action from all civil liability to the State for performing additional investigative and remedial activities.

Chevron announced its intent to enter Ohio's VAP in January of 1996. The investigation of the nature and extent of the contamination at the facility is currently underway. As of today, the Phase I investigation of the facility has been completed and Phase II investigation is approximately 95% complete, the Ohio VAP's equivalent of the RCRA Facility-Wide Investigation ("RFI"). Chevron has accomplished, in little over a year, the investigative work it has taken several years to complete in connection with various other remedial projects without

any greater understanding of the nature and extent of contamination being achieved at these other sites. This is so because the Ohio VAP's investigative requirements are quite specific and parallel federal program requirements. What is eliminated, however, is the time consuming and costly negotiations over the scope of the work and methodology to be used that occurs in connection with traditional regulatory programs. In addition, Chevron completed three significant interim remedial measures under Ohio's VAP during this period, reducing the potential for environmental impacts arising from former operations and hastening the timing of redevelopment. These interim remedial measures include closure of several former wastewater treatment units, removal of several asphalt spills and cleanup and partial abandonment of the on-site sewer system.

Because the work under the Ohio VAP is performance-based, it can proceed more quickly than it would otherwise proceed under more traditional regulatory programs. By performance-based, we mean that Ohio EPA has identified the investigative and remedial objectives to be achieved, the requirements for the demonstration that applicable standards have been met and, where necessary, the specific methodologies to be used. Accordingly, a company like Chevron that desires to move quickly and effectively toward cleanup can do so within the framework of the program.

By contrast, Chevron's cleanup of its former Cincinnati refinery is lagging. The RCRA Corrective Action Order was issued by U.S. EPA in 1993 requires (1) continued implementation of an Interim Measures Program involving groundwater remediation which had been instituted by the Company voluntarily prior to issuance of the Order, (2) the requirement to conduct an RFI to define the nature and extent of contamination at the facility and (3) performance of a Corrective Measures Survey to evaluate alternatives for necessary corrective action. Interim Measures are

ongoing, as well as the RFI, although the scope of the RFI took three years to negotiate with U.S. EPA.

Chevron's experience with the Ohio VAP has been a positive one. However, a significant concern of Chevron's is the extent to which its cleanup efforts, once completed at the former Toledo refinery, will be "second guessed" under federal program requirements. Successful completion of a voluntary action under Ohio's VAP results in a covenant not-to-sue with regard to claims by the State for further investigative and remedial work at the site. Informal discussions with potential developers and lenders have raised a concern regarding U.S. EPA's acceptance of a cleanup under Ohio's VAP. In order to assure some finality with respect to the cleanup decision, cleanup achieved under Ohio's VAP must be harmonized with the panoply of federal program requirements. To make these properties attractive to developers and lenders, the fear of acquiring unresolved environmental liability must be eliminated. Successful completion of a State voluntary action and the obtaining of a covenant not-to-sue should preclude further remedial work unless the facility investigation missed a type or source of contamination, there is a failure of control measures or significant changes in land use occur.

Particularly problematic in any cleanup activity, even in the context of a voluntary action, is the triggering of RCRA hazardous waste requirements for the active management of wastes which were not hazardous at the time of generation or deposition. Chevron has spent and continues to spend considerable time and expense to understand the nature and origin of the materials we are remediating. The potential impact of triggering RCRA requirements for the handling of remediation wastes has colored Chevron's thinking greatly. For example, during consideration of implementation of the Interim Measures mentioned previously, one question that

arose was the origin and pedigree of sediments in a former process sewer. If it were not for a thorough understanding of the history of the former process sewer system that subsequently determined these wastes were nonhazardous at the Toledo site, it is likely that Chevron would have abandoned this system and contained the sediments in-place rather than incur the tremendous costs associated with off-site treatment and disposal of a listed land-banned hazardous waste subject to RCRA's land disposal restrictions. Such a decision, motivated by economics, would probably not have been most beneficial to the environment or the redevelopment effort. However, because Chevron had sufficient information that the wastes in the process sewer system would not trigger RCRA requirements, Chevron was able to remove these contaminated soils and dispose of them in an environmentally safe manner.

Decisions regarding the closure of on-site solid waste disposal areas at the Toledo facility are similarly hostage to the potential impact of RCRA regulations. A decision on whether to address several areas of soil contamination which exceed Ohio's VAP Industrial Use Direct Contact Soil Standards by using excavation and off-site biotreatment followed by beneficial soil reuse or closure in-place using engineered and institutional controls will depend upon our understanding of the refinery waste streams historically handled within these areas. The outcome of this decision will have long term implications for the success of future redevelopment at this site.

To further promote streamlined and cost-effective cleanups, remediation wastes should be exempted from classification and regulation as hazardous wastes. Instead, U.S. EPA or the RCRA authorized State should determine waste management practices on a site-specific basis.

Thank you for the opportunity to provide this testimony to the Subcommittee. John Tiffany and I are available for any questions you may have.